

UNREDACTED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

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UNITED STATES OF AMERICA	)	
	)	
VS	)	NO.1:19-cr-10040
	)	JACKSON, TENNESSEE
	)	
ALEXANDER ALPEROVICH,	)	
JEFFREY W. YOUNG, JR., and		
ANDREW RUDIN		

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REPORT DATE

NOVEMBER 21, 2019

BEFORE THE HONORABLE J. DANIEL BREEN,  
UNITED STATES DISTRICT JUDGE

KRISTI HEASLEY, RPR  
OFFICIAL COURT REPORTER  
U.S. COURTHOUSE, SUITE 450  
111 SOUTH HIGHLAND AVENUE  
JACKSON, TENNESSEE 38301

UNREDACTED TRANSCRIPT

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EXAMINATION INDEX  
NO TESTIMONY OFFERED

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EXHIBITS

NO EXHIBITS MARKED

UNREDACTED TRANSCRIPT

1 THE COURT: U.S. versus Jeffrey Young,  
2 Alexander Alperovich, Andrew Rudin, cast of numbers.  
3 (Defendant Alperovich and Young Present.)

4 MS. PAYERLE: Good morning, Your Honor.  
5 Kay Payerle on behalf of the United States.

6 THE COURT: Thank you, ma'am.

7 MR. JOHNSON: Your Honor, Steven Johnson  
8 on behalf of Dr. Alperovich.

9 THE COURT: Mr. Johnson.

10 MR. MCNEIL: Morning, Your Honor. I'm  
11 John McNeil standing in for Mr. Ferguson.

12 THE COURT: Okay.

13 MR. SANAN: Morning, Your Honor. Nishay  
14 Sanan on behalf of Andrew Rudin appearing by telephone  
15 and Mr. Rudin's appearance is waived.

16 THE COURT: Thank you, sir.

17 I'll hear whoever wishes to step up.

18 Mr. Johnson, do you want to step up and  
19 tell us a little bit about where we are, sir.

20 MR. JOHNSON: Your Honor, at the last  
21 court date we indicated to the Court that there could be  
22 some issues with the complexity of this case. And the  
23 Court inquired about scheduling. And, you know,  
24 obviously, there is a lot of discovery here.

25 And I took the position at the last

1 hearing that we're not prepared to even file pre-trial  
2 motions, at least at that last report date, because we  
3 were still trying to analyze what we had been provided  
4 and figure out what issues to raise.

5 Since that time we have endeavored to  
6 figure out and document what we've been provided and then  
7 what we think the government still has to produce to us.  
8 And we filed a supplemental discovery request with the  
9 government. I conferred with government's counsel about  
10 that.

11 It's my understanding that they are in the  
12 process of providing us an additional 2 terabytes of  
13 discovery. I shipped a hard drive up to DOJ in D.C.  
14 yesterday so they can begin copying that, giving that to  
15 us. It's my understanding that will be provided as soon  
16 as it's copied.

17 It's going to consist of the other items  
18 that I listed out in the second discovery request, to  
19 include the remainder of materials that were seized from  
20 Preventagenix, the clinic that was operated by Defendant  
21 Young, and also things like the search warrant, the  
22 search warrant affidavit, which we don't have yet, and  
23 like materials.

24 And once we have those -- I'm speaking a  
25 little bit in the dark right now, because I don't know

1 what all is on the 2 terabytes that they're going to give  
2 us. But once we have those materials and analyze them,  
3 we'll be in a better position to talk about scheduling.

4               However, in conferring with counsel for  
5 co-defendants, and also counsel for the government, I  
6 believe where we're at is we may be in agreement,  
7 consistent with the Court's calendar, to go ahead and  
8 schedule a trial date for the last two weeks of  
9 September, and then back certain deadlines up from that  
10 trial date, consistent with what this Court asked us to  
11 do at the last court date. Which was to see if we can  
12 come up with a pre-trial order, an agreed pre-trial order  
13 on scheduling that would deal with issues like Daubert  
14 hearings and Daubert disclosures and pre-trial hearings  
15 that we're going to have to deal with in a case of this  
16 nature.

17               THE COURT: Well, I had -- I think -- of  
18 course, it seems like every time I have a hearing in this  
19 we have a new AUSA that is appearing. So the gentleman  
20 that was here last time, I instructed him to get me a  
21 deadline as to when the government is going to be  
22 presenting or producing all the information. They kept  
23 telling me there was statements repeatedly going on. I  
24 said, well, we've got to have an end date at some point.

25               So, ma'am, you're in the hot seat right

1 now. So tell me when that's going to be.

2 MS. PAYERLE: Yes, Your Honor. I have,  
3 obviously, been in contact -- we're all in a team, so  
4 I've been in contact with Mr. Knutson about this and we  
5 discussed it.

6 And from our perspective -- well, first of  
7 all, if I can back up. There is two issues.

8 The first issue is the quantity of  
9 discovery that is to be provided. Mr. Johnson and our  
10 prosecution team had a few discussions about this. And  
11 we are providing everything he's essentially asked for.

12 We heard about this list of information  
13 that he wanted the same time the Court did. That was the  
14 first time we heard about it. So when he filed this  
15 request with the Court, of course, we immediately got in  
16 touch on the phone. And we said, sure. If that's the  
17 stuff that you want, you can have it. Just send us a  
18 hard drive and we will get it to you.

19 We don't believe the case is as complex as  
20 the defense. We think it's a relatively straightforward  
21 case. The 2 terabytes is a bit misleading. It's  
22 really -- they're computer images of hard drives. So it  
23 has every single thing that's on the hard dive.

24 And as I think Mr. Johnson knows, when you  
25 get a computer image, you get all the software. So all



1 the Windows software, all the Microsoft Word Suites  
2 software. And that comprises about 90 percent of the  
3 stuff on the computer image. So the actual reviewable  
4 data is usually less than 10 percent of that information.

5 And then, of course, most of that will  
6 just be the day in and day out sort of business of the  
7 practice.

8 The case here is centered around patient  
9 records, essentially. And then, of course, witnesses who  
10 may testify about how things were done with respect to  
11 those patient records.

12 So, I mean, I do want to sort of correct  
13 the record a little bit on the quantum of evidence that  
14 was or would be outstanding. And I do think that  
15 after -- let's give FedEx some time. After next week the  
16 defense will have most of the existing records of  
17 discovery that exists.

18 So I want to cabin that off and say that I  
19 believe it will be in very short order. Maybe -- let's  
20 give it two weeks to make sure. But I think in terms of  
21 what they want and what they have asked for, you know,  
22 they'll have it as soon as we get a get hard drive and as  
23 soon as we can upload the material they have asked for.

24 THE COURT: That's one aspect --

25 MS. PAYERLE: That's right.

1 THE COURT: -- we're talking about.

2 The other is is your colleague last time  
3 was telling me that he was, they were, you all were still  
4 taking statements --

5 MS. PAYERLE: Yes, Your Honor --

6 THE COURT: -- of witnesses.

7 And, you know, this case is not an old  
8 case, but it has some age on it. And, I mean, I  
9 recognize maybe this isn't the normal case the  
10 prosecution always prosecutes. But nonetheless, there  
11 has got to be an end date. And I instructed your  
12 colleague to tell me when that was going to be. And I'm  
13 expecting you to tell me that.

14 MS. PAYERLE: Yes, Your Honor. And I  
15 think that is what I'm getting at. We don't actually  
16 think there are a lot of new people to go interview --

17 THE COURT: That doesn't tell me anything.

18 MS. PAYERLE: Right. But what I think we  
19 were hoping to do is set the deadlines keyed off of the  
20 trial date.

21 And the reason is because if there is a  
22 trial date a year from now or two years from now,  
23 sometimes you lose witnesses, sometimes evidence gets  
24 stale, sometimes you need to refresh people, and new --  
25 and as you're preparing them for testimony.

1 And so what I was hoping to do, and what  
2 Mr. Knutson and I discussed, is providing the Court with  
3 an end date that would be 60 days back from the trial  
4 date. Whatever date the trial is, we would firmly say no  
5 new witnesses after, you know, 60 days before that date.

6 And we do that only because of the  
7 practicality of having a trial date that is so far out.  
8 And because people -- you know, cases are made of human  
9 witnesses and things happen to human beings.

10 But I say with the representation that  
11 most of what we have already done, and most of what we  
12 intend to do so in the case, we believe in good faith is  
13 done, and will be done. It's just a matter of as we  
14 prepare for trial, just sometimes things come up.

15 We don't anticipate, in other words,  
16 exploring other areas of the case, bringing other areas  
17 of investigation, things like that. But just things  
18 happen with witnesses because they're human beings.

19 THE COURT: Okay.

20 MS. PAYERLE: I think I just want some  
21 clarity on how maybe --

22 THE COURT: Mr. Johnson, what do you think  
23 about that, sir?

24 MR. JOHNSON: Well, one of our concerns  
25 here, Your Honor, is -- and I'm going to go back to the

1 discovery materials. I appreciate the government, the  
2 discussion that I had. And they have reviewed my second  
3 Rule 16 discovery request that itemized what they have  
4 given us. We had not had any itemization from the  
5 government on what they had given us. They just gave us  
6 a bunch of electronic materials.

7 And so they have agreed to give me the  
8 additional items that I've itemized in my second  
9 discovery request; hence, these 2 terabytes of materials.  
10 But that's not all of it.

11 One of the things that I specifically  
12 asked for was, look, the electronic materials you have  
13 given us are not searchable. And surely the government  
14 has it in some way that is searchable, to be able to go  
15 through it and look at this volume of information.

16 And it's been represented to me, and I  
17 have no reason to disbelieve that this representation is  
18 accurate, that they do not have it in any sort of format  
19 that is searchable, other than how they produced it to  
20 us. So that dealt with that issue.

21 But the issue that is still outstanding,  
22 and it's a substantial issue, is in a case like this,  
23 expert disclosures.

24 And if I understand the government's  
25 counsel correctly, they are pretty much done with this

1 case other than just doing some additional witness  
2 interviews.

3 And so if the rub of this case is really  
4 going to turn on expert testimony concerning the medical  
5 decision-making that occurred here, and then also the  
6 medical supervision that may or may not have occurred  
7 here, that's really kind of two different areas of  
8 expertise, then why can't the government go ahead and  
9 give us expert disclosures. And let's go ahead and get  
10 started on the issues that really matter here in this  
11 case.

12 I'm not saying that all the lion of  
13 information doesn't matter, because it does. But  
14 presumably, any expert witness that the government is  
15 going to have, or expert witnesses, have reviewed all of  
16 this information, and are able to provide an opinion  
17 about the medical decision-making here.

18 And so we have got to have our own  
19 witnesses -- first, to identify what type of experts  
20 we're going to have, we need to know what kind of experts  
21 they have. And then we're going to have to do the exact  
22 same thing.

23 And so respectfully -- I addressed this at  
24 the last time we were here. I appreciate them giving us  
25 the additional 2 terabytes, but we also need the expert

1 disclosures. And I think that's critically important to  
2 be able to try this case.

3 THE COURT: When is that going to be done,  
4 ma'am?

5 MS. PAYERLE: Your Honor, I think the  
6 position is exactly the same, which is it really depends  
7 heavily on the trial date. And that is because expert  
8 witnesses -- again, we have scheduling issues. We have  
9 to make sure that they're available to testify.

10 But in an ordinary case, at least the ones  
11 that I've done that are like this, sometimes expert  
12 disclosures are even 30 days before trial is fairly  
13 reasonable. We're willing to back up to 90 days before  
14 trial.

15 Key it off the trial date. And we will  
16 just say, look, you know, we'll ensure by 90 days before  
17 trial, whenever that trial date is set, that we have  
18 somebody who is able to testify and available in their  
19 schedules. And they are experts or doctors, so they have  
20 clinic schedules and things like that.

21 I've had expert witnesses that, you know,  
22 because of lengthy delays in trials, simply became  
23 unavailable due to illness or other things.

24 So for us to identify an expert  
25 conclusively and to ensure that the report is consistent

1 with the testimony, really needs to be done once we have  
2 a trial date in the record and we're able to ensure that  
3 the person whose report we produce is the person who will  
4 be on the stand testifying.

5 And so, you know, we would just ask for a  
6 date that's 90 days prior to the trial date. And since  
7 the parties are prepared to set a trial date, we're then  
8 also prepared to set that expert witness date.

9 MR. JOHNSON: I've had cases where there  
10 has been a later expert disclosure. I've had cases  
11 where --

12 THE COURT: Been earlier.

13 MR. JOHNSON: -- it's been a lot earlier.

14 And I will note, and the Court knows this,  
15 but I want to say it for the record, Rule 16 does not set  
16 out a different deadline for expert disclosures. Rule 16  
17 delineates things that have to be provided upon request,  
18 because it is presumed that once the government obtains  
19 an indictment, it has got its information together for  
20 the case.

21 And so my concern is, is that if we have a  
22 late expert disclosure in a case like this that's 30  
23 days, 60 days, even 90 days before the trial date, we're  
24 running the real risk of blowing up whatever trial date  
25 that we set.

1 MS. PAYERLE: If I may, Your Honor,  
2 respond.

3 THE COURT: Yes.

4 MS. PAYERLE: One of the things -- again,  
5 this goes back to the issue of simplicity. I don't think  
6 there is any secret about what the expert testimony looks  
7 like in this case, because there are really only a few  
8 discreet issues the jury will find --

9 THE COURT: It would be nice for defense  
10 counsel to have that. Even though it may not be a  
11 surprise to him, it would be well that he has it.

12 MS. PAYERLE: Yes, Your Honor. But what  
13 I'm actually discussing is that because, because the  
14 issue is pretty discreet, that is whether the  
15 prescriptions are in the course of professional conduct  
16 and not for a legitimate medical purpose, in this  
17 particular case, because of these expert -- it really is  
18 more about making sure we have somebody who can testify  
19 on a specific date and making sure that person has an  
20 opportunity to do a report.

21 Defense has the same patient records that  
22 our expert has and knows where this is going.

23 And I understand the Court's urgency to  
24 get them that. But I do think from our prospective, just  
25 for a scheduling pragmatic purpose, it just makes sense



1 to key it off the trial date.

2 Mr. Johnson: Judge, can I add one caveat  
3 to that?

4 THE COURT: Sure.

5 MR. JOHNSON: I'm not sure that we have  
6 all of the records here. The bulk of the materials that  
7 were taken out of Preventagenix have not been provided to  
8 us in discovery yet. All of the electronic materials  
9 that were seized out of that clinic have not been  
10 provided to us yet. That's part of the 2 terabytes of  
11 material that are getting ready to be provided to us.

12 I appreciate counsel for the government's  
13 representation that a lot of that may be an operating  
14 system of the computer. In my experience, that's not  
15 necessarily the case. Operating system of the computer  
16 actually is a very small portion of the ultimate hard  
17 drive of the computer.

18 And there may not be information on the  
19 computers for the clinic that relates to patient care.  
20 I'm going to be surprised if there is not.

21 And so I'm -- I'll go back to what I said  
22 before. For us to have expert disclosures, I would  
23 presume that the government's experts have reviewed the  
24 medical information in this case. And the way I see  
25 it -- and, no, I don't think it's a surprise, the type of

1 expert testimony the government is going to provide.

2 But just because it's not a surprise as to  
3 the type of the expert testimony, both with respect to  
4 were prescriptions provided in the course of medical  
5 practice and for a legitimate medical purpose, but then  
6 also was adequate medical supervision conducted by the  
7 supervising physicians who were charged here.

8 At the same time we need to know exactly  
9 what that opinion is and who is going to be offering that  
10 opinion.

11 THE COURT: Well, it strikes me that --  
12 well, what were you saying the last two -- what time  
13 frame are you talking about a potential trial in  
14 September?

15 MR. JOHNSON: Last two weeks of September,  
16 Your Honor.

17 THE COURT: Okay. I'm trying to find the  
18 e-mail. Something came up the last couple of days  
19 surprisingly that might have a potential problem that I  
20 was -- how long do you all anticipate this case is going  
21 to take to try?

22 MS. PAYERLE: Your Honor, the  
23 government -- I can't image it will last longer than two  
24 weeks. And that's only because there is three defense  
25 counsel. I have tried doctor cases. I've never had one

1 last longer than about a week and a day. I'm pretty  
2 efficient on examination. But I don't know the -- I  
3 think a lot of it, in my experience, depends on the  
4 cross-examination efficiency.

5 I would also note to Your Honor that I  
6 don't really think we need until September. But my  
7 understanding is just when counsel got together and  
8 conferred, because there were so many of us, I think that  
9 may have wound up being the date that we all had  
10 available. But, of course, the government can be ready  
11 sooner.

12 THE COURT: Well, the concern I have, I  
13 guess, is making sure that defense counsel receives the  
14 information that it claims it's entitled to. Obviously,  
15 until they get these terabytes of information that you  
16 say is going to be forthcoming in the next hopefully week  
17 or so, that hopefully gives them a little bit of a better  
18 idea where they are.

19 Based on Mr. Johnson's statements it  
20 sounds like he's concerned about whether or not it's  
21 going to give him all of what he thinks he's entitled to.  
22 And, obviously, I'm can't prejudge that. Until he sees  
23 it and tells me one way or the other, as well as  
24 co-counsel, whether or not that is, in fact, what he  
25 needs or what he's expecting to receive. So it's -- I'm

1 shooting in the dark here right now until he tells me  
2 what it is that he's received.

3 I tell you what, let's go ahead and hold  
4 the last two weeks of September. When will that be?  
5 There is like a half of a week the very last week of  
6 September. Are you talking about including that, which  
7 goes into the first part of October? Is that what you're  
8 talking about?

9 MS. PAYERLE: I believe the date was  
10 September 14th. Is that right?

11 MR. JOHNSON: Yes. We talked about the  
12 week of September 14 and the week of September 21st.

13 And, Judge, I will say in my experience,  
14 particularly in cases like this, where thorough  
15 cross-examination is necessary, you know, the government  
16 anticipates a two week trial for the government's  
17 proof -- this is a case where I anticipate defense proof.

18 THE COURT: I don't think she is  
19 talking -- I think she's talking about the whole case.

20 MS. PAYERLE: That's right, Your Honor.  
21 Yeah. And in the cases where I have tried, including  
22 doctors, and even though -- the government is usually  
23 through with its case by about Thursday. But again, it  
24 depends on cross-examination. So maybe the government is  
25 done in a week. Again, though, depending heavily on

1 cross-examination style.

2 THE COURT: Well, that will give you --  
3 you think you can get your case presented in a week?

4 MR. JOHNSON: I'm shooting in the dark  
5 too, Judge.

6 THE COURT: Okay. Well, let's go ahead  
7 and hold that time period. You said the 14th and then  
8 the 21st?

9 THE CLERK: Yes, sir.

10 THE COURT: I think I'm here both of those  
11 weeks as far as I know right now.

12 THE CLERK: You only have civil trials.

13 THE COURT: Well, this overrides those.

14 So we will go ahead and set that.

15 Now with regard to the expert information,  
16 now that you know what those dates are, ma'am, I think we  
17 could push that disclosure back further than 90 days. I  
18 think -- here we are in November. We still have got  
19 quite a bit of time to get that to defense counsel.

20 I would think something in -- talking  
21 about this summer is what you're talking about. I would  
22 think early spring. I can't image that you couldn't get  
23 that information to them early in that time period.  
24 Maybe in April. Is that a problem?

25 MS. PAYERLE: Okay. Your Honor, if I

1 could push -- honestly --

2 THE COURT: I mean, you can now -- you can  
3 now tell your people, the people that you plan to  
4 present, these are the dates. We want you to hold these  
5 dates.

6 MS. PAYERLE: Yes.

7 THE COURT: And unless something happens  
8 to them, which hopefully it doesn't, but, I mean, that  
9 gives them -- put it on their calendar and they're ready  
10 to go.

11 Now they may tell you, I can't be there  
12 then. So if that happens, you need to tell me and tell  
13 the counsel, and maybe we can try to work around that  
14 somewhat.

15 MS. PAYERLE: Why don't we -- since we  
16 have the trial date September 14th, why don't we say  
17 April 14th.

18 THE COURT: How about that, Mr. Johnson?

19 MR. JOHNSON: That would be acceptable to  
20 us, Your Honor.

21 THE COURT: Is that okay with you all too?

22 MR. MCNEIL: That is, Your Honor.

23 THE COURT: All right. So April 14th will  
24 be the expert disclosures from the government.

25 And do you want to set a time period for

1 when you're going to be disclosing your expert  
2 information?

3 MR. JOHNSON: If you could give us -- just  
4 looking at the calendar -- if we get expert disclosures  
5 on April 14th, if we could have -- if we had 90 days.  
6 Then we know their experts -- and we're not going to hold  
7 off on waiting to sort of work on expert issues until  
8 then. But we -- that puts us in July.

9 THE COURT: Is that all right with the  
10 government?

11 MS. PAYERLE: Let me see if I can count  
12 forward. And then that would give everybody time --

13 THE COURT: That would be April to May,  
14 May to June, June to July, July 14th.

15 MS. PAYERLE: I think that's okay.

16 THE COURT: So July 14 will be defense  
17 counsel's expert disclosures.

18 Now I still haven't gotten complete  
19 information from the government about -- like I said,  
20 your colleague -- I forgot your colleagues' name.

21 MS. PAYERLE: Mr. Knutson, Your Honor.

22 THE COURT: Mr. Knutson was telling me  
23 that they were continuing to provide and get, obtain  
24 statements from witnesses. And I guess -- I think like  
25 Mr. Johnson, well, the indictment -- maybe they've got

1     them, but maybe they don't.

2                     When is that -- I wanted a date when that  
3     is going to be completed, so that the defense would then  
4     say, okay, now we've got everything that is going to be  
5     presented here.

6                     MS. PAYERLE: Yes, Your Honor. And I  
7     guess --

8                     THE COURT: And I'm not saying we won't  
9     see something that might pop up. I mean, I'm not trying  
10    to hold you completely. But I think there needs to be  
11    some kind of time period there so that everybody is on  
12    the same page here.

13                    MS. PAYERLE: Well, I think -- that's the  
14    thing. I want to suggest April 14th as well, with this  
15    caveat. Which is, in the course of trial preparation  
16    exiting witnesses very often say things that are -- you  
17    know, when they're meeting face to face, when it's  
18    intense, when we're talking about testimony, when we're  
19    drilling down on statements, I've never had a case where  
20    a witness doesn't say something that we need to go  
21    corroborate, that we need to handle in the course of  
22    trial prep. And we are always extremely prompt about  
23    turning those things over.

24                    But I would say that any new avenues of  
25    investigation, any kind of active looking for things



1 that -- just to make sure that -- I just don't want to  
2 run afoul of this deadline.

3 THE COURT: April 14th. Is that all  
4 right?

5 MS. PAYERLE: April 14th.

6 THE COURT: All right. April 14th.

7 MR. JOHNSON: Thank you, Your Honor.

8 MS. PAYERLE: And is the Court okay with  
9 the sort of ordinary trial prep?

10 THE COURT: Yes.

11 MS. PAYERLE: Okay. Thank you, sir.  
12 Appreciate that.

13 THE COURT: I understand.

14 All right. What else we need to talk  
15 about today?

16 MR. JOHNSON: I think something that we're  
17 trying to do, and we're working in good faith to do, is  
18 to set some other pre-trial schedule issues.

19 I think we're going to need a, maybe some  
20 deadlines on motions, and then also deadlines on Daubert  
21 motions, and setting pre-trial hearings. I anticipate  
22 they'll be, particularly once we have the search warrant  
23 and search warrant affidavit, there could be suppression  
24 issues or evidence exclusion issues that we may need to  
25 take a look at. I don't know for sure, because I don't

1 have the stuff yet.

2 But we're working on those, Your Honor.

3 I'm just thinking out loud about the best way to  
4 coordinate with the Court on getting those scheduled.

5 If we're working together to try to get  
6 those scheduled, rather than do so and take up the Courts  
7 time, do you want us to -- how do you want us to do that?

8 THE COURT: I think it would be  
9 appropriate for you all to sit down, and Mr. McNeil and  
10 Mr. Ferguson, to sit down and just come up with a  
11 schedule -- we now kind of have a parameter of where we  
12 are in terms of the trial -- and submit it to the Court.

13 You know, if it presents a problem to me,  
14 I can let you know. Otherwise, we can put it down as an  
15 order.

16 MR. JOHNSON: Thank you, Your Honor.

17 THE COURT: Is that satisfactory?

18 MS. PAYERLE: Yes, Your Honor.

19 THE COURT: I don't see why you can't --  
20 seems like you're working all right, I don't see why you  
21 couldn't do that.

22 MR. JOHNSON: We will do that. If we need  
23 to pick -- I don't know how granular you want us to get  
24 on trying to pick hearing dates and things like that.  
25 But do you want us just to confer with your chambers on

1 dates?

2 THE COURT: Yes, you can, and with Ms.  
3 Cheairs. And she has got my calendar. And if I'm  
4 available, then I'm happy to accommodate you in that  
5 regard.

6 MR. JOHNSON: Thank you, Your Honor. And  
7 we're working in good faith on that. And I think very  
8 shortly we'll have a proposed order for the Court.

9 THE COURT: Okay.

10 MR. JOHNSON: Thank you.

11 MS. PAYERLE: Your Honor, if I may just  
12 ask. And I just think both counsel could use some  
13 clarification on the local rule about discovery letters  
14 and so forth.

15 It's our understanding that we should  
16 confer before raising any discovery issues --

17 THE COURT: Yes, ma'am.

18 MS. PAYERLE: And I just -- because I know  
19 Mr. Johnson was in good faith trying to follow the local  
20 rule. But we were just a little taken off guard and...

21 And so as we proceeded in what will be a  
22 discovery heavy case, I just want to be sure that we all,  
23 that our requests to them and their requests to us don't  
24 necessarily need to be raised to the Court, unless there  
25 is disagreement.

1 THE COURT: No. That's correct.

2 MS. PAYERLE: Okay. Thank you, sir.

3 MR. JOHNSON: Judge, I will -- let me just  
4 elaborate briefly.

5 We filed our Rule 16 discovery request in  
6 letter form per the local rules.

7 THE COURT: Yes, sir.

8 MR. JOHNSON: The government filed its  
9 Rule 16, multiple Rule 16 discovery responses in letter  
10 format on ECF with the Court, per the local rules. I  
11 filed a supplemental Rule 16 discovery request, not as a  
12 motion to compel, but on ECF, per the local rules.

13 And so that -- if the Court -- just as a  
14 point of clarification, if I have another, for example,  
15 supplemental Rule 16 discovery request, does the Court  
16 not want that filed on ECF or -- I think they are taking  
17 some issue with the fact that I filed a supplemental Rule  
18 16 discovery request, not a motion to compel, but a  
19 supplemental discovery request on ECF. And so I think  
20 that's the point of contention.

21 THE COURT: If you want to file it, I  
22 think counsel -- different counsel do different, handle  
23 it differently. So I don't have a problem with that,  
24 unless there is some issue that counsel does.

25 MR. JOHNSON: Thank you, Your Honor.

1 THE COURT: Is there a problem from the  
2 government?

3 MS. PAYERLE: No, Your Honor. I just  
4 wanted some clarity --

5 THE COURT: That's fine. And since you're  
6 doing it, let's just keep it consistent.

7 MS. PAYERLE: Okay. Thank you, Your  
8 Honor.

9 MR. JOHNSON: Thank you, Your Honor.

10 THE COURT: If it gets down to the point  
11 where you all are, can't agree -- you agree to disagree,  
12 then you can file a motion to compel and I'll take it up.

13 MR. JOHNSON: Thank you, Your Honor.

14 MS. PAYERLE: Thank you, Your Honor.

15 THE COURT: Anything else from -- Mr.  
16 McNeil, anything else from your side, sir?

17 MR. MCNEIL: Not from us, Judge.

18 THE COURT: Okay. All right.

19 Do we want to set another, maybe another  
20 status conference? I think it might be well just to kind  
21 of keep everybody on track here. Something after the  
22 holidays, maybe in January or February, something like  
23 that.

24 MR. JOHNSON: Your Honor, my suggestion  
25 is -- you know, if we are going to get the additional

1 materials by the end of this month, I think January would  
2 be an appropriate time for a status hearing. I'll be  
3 able to let the Court know at that time what we've  
4 gotten. The last week of January?

5 THE COURT: Yeah. It may end up being the  
6 first part of February, if you don't mind. I've got a  
7 fairily heavy January right now.

8 What do we have, Ms. Cheairs?

9 THE CLERK: Okay. We have Wednesday,  
10 February 5th, 11:00 o'clock.

11 MR. SANAN: Judge, this is Mr. Sanan.

12 I have a trial that starts the first week  
13 of February that is going to go for two weeks. So if we  
14 can get into that latest part of the second or third week  
15 of February so I can attend with my client.

16 THE CLERK: Yes, sir. Wednesday,  
17 February 19th, 10:00 o'clock.

18 MR. SANAN: That works, Your Honor.

19 MS. PAYERLE: Your Honor, that would work  
20 for the government, except that I might personally be  
21 covering another trial. But if Your Honor is okay with  
22 Mr. Pennebaker or Mr. Knutson --

23 THE COURT: That's fine.

24 MS. PAYERLE: Thank you, Your Honor.

25 MR. SANAN: Your Honor, would it be a

1 problem to move it to the 20th, I apologize, of February?

2 THE COURT: What day of the week?

3 MR. SANAN: Thursday.

4 THE COURT: Is that satisfactory?

5 MR. JOHNSON: That's fine. I don't have  
6 Mr. Massey's calendar in front of me. But it's a report  
7 date, and either one of us can handle it.

8 THE COURT: Okay. The 20th at what time?

9 THE CLERK: 10:00 o'clock.

10 THE COURT: All right. Time will be  
11 excluded then.

12 Anything further from any of the parties?

13 MR. JOHNSON: Not from the --

14 MS. PAYERLE: Nothing from the government,  
15 Your Honor.

16 THE COURT: All right. Thank you all.  
17 You will be excused.

18 MR. JOHNSON: Thank you, Your Honor.

19 MR. MCNEIL: Thank you, Judge.

20 THE COURT: Thank you.

21 (End of Proceedings.)

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24

25

1 I, Kristi Heasley, do hereby certify that the  
2 foregoing 31 pages are, to the best of my knowledge,  
3 skill and ability, a true and accurate unredacted  
4 transcript from my stenotype notes in the matter of:  
5 UNITED STATES OF AMERICA

6 VS

)  
)NO.1:19-cr-10040  
)JACKSON, TENNESSEE  
)  
)

8 ALEXANDER ALPEROVICH,  
9 JEFFREY W. YOUNG, JR., and  
ANDREW RUDIN

10  
11  
12 Dated this 12th day of January, 2020.  
13  
14

15 /s/ Kristi Heasley

16 -----  
17 Kristi Heasley, RPR  
18 Official Court Reporter  
19 United States District Court  
20 Western District of Tennessee  
21 Eastern Division  
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24  
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